



FCX PERFORMANCE, INC., and Subsidiaries*
STANDARD TERMS AND CONDITIONS OF SALE

1. **DEFINITIONS USED HEREIN – “Contract”** means the terms and conditions contained herein and Seller’s order acknowledgement. Such contract will remain in full force and effect as written. **“Seller”**, **“us”** or **“we”** means FCX Performance, Inc., or its subsidiary that is the Seller of Goods to Buyer pursuant to this contract. **“Buyer”** or **“you”** means the Buyer of Goods pursuant to this contract. **“Goods”** means the goods, equipment, materials, parts, supplies and/or services supplied by us to you as described in this contract.
2. **COMPLETE CONTRACT** – This contract contains the complete and exclusive agreement between you and us regarding the terms of the sale of the Goods by us to you. This contract supersedes and replaces all previous requests, quotations, orders or agreements concerning the Goods. Any additional or different terms will not become part of the contract for the sale of the Goods and are hereby expressly rejected by us without further notice unless made in writing and signed by an authorized representative of each of Seller and you. Buyer’s acceptance of shipment or performance and/or payment for the Goods constitutes acceptance of the contract. All orders are subject to acceptance by Seller.
3. **PRICES** – All prices quoted are estimates only and are subject to change without notice. Shipping charges, including freight-in and -out and any applicable handling charges in effect at the time, are prepaid and added to invoice, unless otherwise specified by us. Buyer is responsible for freight-in on “freight collect” shipments. Total price for services will be calculated based on our standard service rates in effect at the time the services are performed, and parts supplied as part of services will be invoiced at prevailing prices. Prices do not include duties, any present or future sales, use, excise, value-added or similar taxes. Any applicable taxes or other governmental impositions, which we may be required to pay or collect, will be added to the price and paid by you unless we receive a valid exemption certificate. Where applicable, such taxes shall be billed as a separate item and paid by Buyer. All prices and/or discounts are based on receiving an order for the quantities specified. Any change in quantity may result in a change in price and/or discount.
4. **TITLE, DELIVERY AND RISK OF LOSS** – Unless otherwise specified, delivery points shall be the F.O.B. point specified by Seller, but title to the Goods and liability for loss or damage in transit or thereafter shall pass to you upon our delivery of the Goods to a common carrier for shipment. Shipping and service completion dates are estimates only and not guaranteed.
5. **SHORT, DAMAGED OR DEFECTIVE SERVICES** – Claims for Goods delivered short, damaged or defective (not due to fault of carrier) shall be filed with Seller within ten days from date of invoice. Buyer’s claims for shortages shall detail shipment weights and method of counting the Goods. Claims for Goods delivered short, damaged or defective as a result of the fault of the carrier will be handled by Seller directly with the carrier.
6. **PAYMENT** – Unless otherwise agreed by Seller in writing, full cash payment is due within thirty days after invoice date. Orders are subject to final approval by Seller’s credit department, which may require full or partial advancement. If Buyer delays order processing, partial payment based on the portion of the order completed shall then be paid. Pro rata payments shall be due as shipments are made or as services are performed. In the event Buyer delays shipment, full payment shall be due thirty days from the date seller could have otherwise shipped the Goods. Storage shall be at Buyer’s risk and charges therefor shall be paid before shipment. If Buyer does not pay on time, Seller reserves the right to charge Buyer 1½% per month on the unpaid balance and/or withhold shipments and performance of additional services until paid. Seller reserves the right to process an electronic ACH debit to Buyer’s bank account in the event Buyer presents Seller with a check returned for non-sufficient funds.
7. **INTERPRETATION–RESPONSIBILITY** – When plans and specifications are involved, you are responsible to verify our interpretation of them. When we offer substitutes on any proposal, you are responsible for their acceptability. If we deliver to you any literature concerning the services, you are responsible for complying with it.
8. **EXCUSABLE DELAYS** – No liability shall result from delay in performance or non-performance, directly or indirectly caused by circumstances beyond our control, which include, but are not limited to, Acts of God, fire, explosion, flood, war, terrorism, act of or authorized by any government, accident, labor trouble or shortage, or inability to obtain material, equipment or transportation. Services so affected may be eliminated from the transaction without liability, but the transaction shall remain otherwise unaffected.
9. **CHANGE IN BUYER’S FINANCIAL CONDITION:** Seller reserves the right by written notice to cancel any order or require full or partial payment or adequate assurance of performance from Buyer without liability to Seller in the event of: (i) Buyer’s insolvency, (ii) the filing of a voluntary petition in bankruptcy by Buyer, (iii) the appointment of a receiver or trustee for Buyer, or (iv) the execution by Buyer of an assignment for the benefit of creditors. Seller reserves the right to suspend its performance until payment or adequate assurance of performance has been received. Seller also reserves the right to cancel Buyer’s credit at any time for any reason. Buyer, in order to provide security for the payment of the full price of Goods furnished hereunder, grants Seller a security interest in the Goods and the proceeds thereof. Title to the Goods shall remain in Seller, and Goods furnished by Seller shall not become a fixture by reason of being attached to real estate, until paid in full. Buyer agrees to execute any documents or furnish information necessary to perfect this security interest. A copy of the invoice may be filed at any time as a financing and/or chattel mortgage, in order to perfect Seller’s security interest. Seller may, in its sole discretion require, and Buyer hereby grants to Seller, a continuing purchase money security interest in all inventory, equipment, and Goods sold by Seller to or for the benefit of Buyer, wherever located, and all accessions and products and all proceeds from the sale thereof; and all accounts and accounts receivable which may from time to time hereafter come into existence during the term of this Security Agreement. Seller’s purchase money security interest is explicitly limited to outstanding obligations between Seller and Buyer.
10. **LIMITED WARRANTY AND WARRANTY DISCLAIMER** – The Goods sold hereunder and/or used in connection with the services are not manufactured by us, and as such, we make no warranty, express or implied, concerning such Goods other than that we have good title to such Goods and will use our reasonable commercial efforts to obtain from each manufacturer, in accordance with the manufacturer’s warranty, the repair or replacement of Goods that may prove to be defective in material or workmanship. Services provided by third party contractors are subject only to such warranties as are extended by such third party contractors. Notwithstanding the foregoing, to the extent we are permitted and able and so long as Buyer has paid in full for the Goods or services subject to the warranty claim, we will pass on and make available to you any warranties made by the suppliers, manufacturers of such Goods or third party contractors. For services provided directly by Seller, we warrant that our service will be performed in accordance with applicable industry standards prevailing at the time of performance. Our obligations under this warranty are conditioned upon you notifying us of any alleged breach of the foregoing warranty promptly after discovery and in any event not later than 90 days after substantial completion of our services, our satisfaction upon inspection that the warranty has been breached, and that Buyer has paid in full for the services subject to the warranty claim. In the event of a breach of this warranty we will correct the defective labor or workmanship at our expense or, at our discretion, give you credit in a reasonable amount on account of the defect but in no event in an amount greater than the paid price of the services hereunder. **Except as stated hereinabove, Seller makes no other warranties concerning the Goods whatsoever. SELLER DISCLAIMS AND EXCLUDES ALL OTHER EXPRESS WARRANTIES AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
11. **LIMITATIONS OF REMEDIES AND DAMAGES** – You agree that our obligation described in the preceding paragraph is your sole and exclusive remedy, and that our total liability to you, your customers or to any other person, relating to this contract, its performance or non-performance, or from the use of Goods furnished or services provided, is limited to the price of the Goods and/or services giving rise to the claim. Except as to title, such obligation and liability shall terminate at the end of the manufacturer’s warranty period for the applicable Goods. **SELLER AND ITS SUPPLIERS WILL NOT, IN ANY EVENT, BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PENAL DAMAGES INCURRED IN CONNECTION WITH THE GOODS , WHETHER ANY CLAIM FOR RECOVERY IS BASED UPON OR ARISES OUT OF THEORIES OF CONTRACT, NEGLIGENCE, TORT (INCLUDING STRICT LIABILITY) OR OTHERWISE, INCLUDING BUT NOT LIMITED TO BACK CHARGES, LABOR COSTS, COSTS OF REMOVAL, REPLACEMENT, TESTING OR INSTALLATION, LOSS OF EFFICIENCY, LOSS OF PROFITS OR REVENUES, LOSS OF USE OF THE GOODS OR ANY ASSOCIATED PRODUCTS, DAMAGES TO ASSOCIATED PRODUCTS, LATENESS OR DELAYS IN DELIVERY, UNAVAILABILITY OF GOODS, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, FACILITIES OR SERVICE, DOWNTIME, OR CLAIMS FROM YOUR CUSTOMERS OR OTHER PARTIES TO YOU OR DIRECTLY TO US FOR SUCH DAMAGES.**
12. **CONFIDENTIALITY** - You agree that any commercial, strategic or technical data or other information of Seller, , including pricing, samples or other materials (“Confidential Information”) that is disclosed to otherwise comes into your or your customer’s possession, either orally or in writing or other form, and in whatever medium, is to be treated as confidential and proprietary. You agree that Confidential Information will be maintained in strict confidence, not disclosed to third parties and not used for any purpose other than to use the Goods provided under the contract. You covenant and agree that, during the transaction or the performance of services under the transaction, and thereafter for a period of two (2) years, you will not directly or indirectly solicit for employment or employ (including as a consultant, independent contractor or similar arrangement), or aid others to do so, any employee of Seller or any subsidiary or affiliate of Seller.
13. **HAZARDOUS BUSINESS** – You assume all risk and liability resulting from Goods delivered hereunder, whether used singly or in combination with other products. Unless otherwise agreed to by us in writing, Goods sold hereunder are not intended for use in connection with “safety- related” applications within any nuclear facility or any other hazardous activity such as aircraft, space exploration or other critical applications where failure of a single component could cause substantial harm to persons or property. We disclaim any and all liability if standard commercial products are used in any such applications.

14. **COMPLIANCE WITH STANDARDS** - Seller shall take reasonable steps to ensure Goods sold by it are in conformity with various nationally recognized standards and such regulations as may affect the Goods; however, Buyer recognizes the Goods are utilized in many regulated applications and that from time to time standards and regulations are in conflict with one another. Seller makes no promise or representation that the Goods will conform to any federal, state or local laws, ordinances, regulations, codes or standards, except as particularly specified and agreed upon, in writing as part of the contract between Buyer and Seller. Seller prices do not include the cost of any related inspections, permits or inspection fees. All repairs and/or calibrations provided by us will be completed according to OEM standards unless requested in writing from the Buyer and agreed to in writing by us.
15. **SITE CONDITION AND SERVICE HOURS** - Our service technicians reserve the right to refuse work under hazardous conditions. In case of doubt, a mutual agreement must be reached prior to the start of work. Our technicians are responsible for standard Personal Protective Equipment (PPE) and any site-specific PPE shall be provided by Buyer at Buyer's sole cost. If the services are to be performed on your premises you will afford us the necessary utilities and secured space for the introduction, storage and use of our Goods and equipment during the performance of the services. The normal workday shall be defined as an eight (8) hour day between the hours of 8:00 am and 5:00 pm, excluding weekends and holidays observed by us. Service or travel outside these hours will be invoiced at our prevailing Overtime or Holiday rates accordingly.
16. **U.S. FOREIGN CORRUPT PRACTICES ACT** - Buyer states that it is an independent contractor, and represents, warrants, and covenants that it has not paid, offered or agreed to pay, authorized the giving of, or caused to be paid, directly or indirectly, money or anything of value to any foreign official (as defined in the U.S. Foreign Corrupt Practices Act, as amended), in connection with the purchase and resale of Goods ordered from Seller.
17. **GOVERNMENT CONTRACTS** - If you purchase Goods for sale to any U.S. government, state or local government agency, you are responsible to notify us of all government procurement conditions applicable to the sale when you request our quotation. We will review the conditions and advise you of our ability to comply. If any government action should place or contain a limitation on the price provided for in this contract such that it would be illegal or against public or government policy for us to charge, assess or receive the full amount or to increase such prices as determined by this contract, then we shall have the option to (1) continue to perform under this contract subject to such adjustments in prices that we may deem necessary to comply with such government action, (2) revise this contract, subject to your approval, in order to most nearly accomplish the original intent of this contract, or (3) terminate performance of the affected portions of this contract without liability for any damages.
18. **EXPORTS** - Buyer represents and warrants that it is not on, or associated with any organization on the United States Department of Commerce's Bureau of Industry and Security's Denied Persons List or Unverified List; or the United States Department of the Treasury's Office of Foreign Assets Control lists, Specially Designated Nationals, Specially Designated Global Terrorists, Specially Designated Narcotics Traffickers, Specially Designated Narcotic Traffickers-Kingpin, or Specially Designated Terrorists List; or the United States Department of State's Designated Foreign Terrorist Organizations, Embargoed Countries list, or Debarred Persons List; or is subject to a denial order issued by the United States Department of Commerce. You shall comply with all relevant laws and regulations of governmental bodies or agencies, including but not limited to all applicable export control laws of the United States or other governing agencies and their successors. BUYER AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO NON-COMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS.
19. **CANCELLATION** - Special orders may not be canceled. Other orders may be canceled upon written notice by Buyer within 7 days of the order, subject to a cancellation charge as determined by us that is based upon a percentage of the total amount due under this order. Cancellation for services requires at least 72 hours' notice. All cancellations for services made less than 72 hours prior to the scheduled services time will be subject to a 50% estimated job cost charge. Any material purchased for a service job prior to cancellation will be billed at Seller's normal rate. If returnable, products will be returned to the vendor and Buyer will be responsible for any restocking fees
20. **ASSIGNMENT** - You may not assign or transfer this contract by operation of law or otherwise without our prior written consent, which will not be unreasonably withheld.

We may subcontract all or any part of the services and/or assign or transfer this contract and our rights and obligations hereunder.

21. **RETURNED GOODS** - You must obtain a written return authorization (RA) from us before returning any items and pay any resulting restocking charges as determined by us. We reserve the right to refuse delivery on all items returned to us without a valid RA. Any RA will be valid for 30 days from the date of issuance. Returned material must be received within that 30-day period, or the RA is void. You must prepay all freight. We will issue credit for freight where incorrect shipments have been made by us. All returned items must be new and unused. Special orders cannot be canceled or returned. All returned items must either be stock or non-stock items that we can return to the manufacturer.
22. **APPLICABLE LAW** - This contract and any subsequent contract referred to herein shall be governed by and construed in accordance with the laws of the State of Ohio. Any dispute or claim arising out of or in connection with this contract shall be brought exclusively in any state or federal court with jurisdiction and venue over Cuyahoga County, Ohio and the dispute or claim being brought, unless all such courts refuse to accept jurisdiction and/or venue. Trial by jury is hereby waived by both parties. The United Nations Convention on Contracts for the International Sale of Goods is hereby disclaimed and shall not apply to the purchase and sale of Goods pursuant to this contract.
23. **SEVERABILITY** - Invalidity of any of the terms provided herein shall not affect the validity of any other term.
24. **WAIVER** - Waiver by us of your performance, or inaction with respect to your breach of any provision of this contract, or failure of us to enforce any provision of this contract, will not be deemed a waiver of future compliance herewith or a course of performance modifying such provision, and such provision will remain in full force and effect as written.
- ADDITIONAL TERMS AND CONDITIONS RELATED TO EXPORT OF GOODS**
IN ADDITION TO THE STANDARD TERMS AND CONDITIONS ABOVE, EXPORT SALES OF GOODS WILL BE GOVERNED BY THE FOLLOWING ADDITIONAL TERMS AND CONDITIONS ("ADDITIONAL TERMS"). IN THE EVENT OF A CONFLICT BETWEEN SELLER'S STANDARD TERMS AND CONDITIONS AND THE ADDITIONAL TERMS, THE ADDITIONAL TERMS SHALL PREVAIL FOR EXPORT SALES OF SELLER PRODUCTS.
25. **FOREIGN PRINCIPAL PARTY IN INTEREST - FREIGHT FORWARDER AND DOCUMENTATION:** It is specifically agreed that Buyer shall be the foreign principal party in interest and/or that its freight forwarder shall act as Buyer's agent in such capacity for Export Administration Act or other applicable purposes; and Buyer and freight forwarder shall assume responsibility for all export or routed transactions documentation. At Seller's request, Buyer or its freight forwarder shall provide copies of any export, shipping, or import documentation prepared by Buyer or its freight forwarder related to sales to them by Seller.
26. **COUNTRY OF IMPORTATION AND ANTI-DIVERSION** - Buyer represents that it is purchasing products from the U.S. and importing them to the country specified in the Buyer and Seller documentation. Buyer agrees that the products will be shipped to the specified destination in compliance with the laws of such destination and the U.S., and that the products will not be directly or indirectly sold, exported, transferred, assigned, used, or otherwise disposed of in a manner which may result in any non-compliance with applicable U.S. laws and regulations relating to the product purchased by Buyer. Any commodities, technology and software will be exported from the U.S. in accordance with the U.S. Export Administration Regulations and other applicable laws or regulations. Diversion contrary to U.S. law is prohibited. If requested by Seller, Buyer shall provide documentation satisfactory to Seller verifying delivery at the designated country. Buyer further agrees to inform Seller at the time of order of any North American Free Trade Agreement or other applicable documentation, packaging or product marking or labeling, but Seller shall not be responsible for providing any such documentation, packaging, marking or labeling other than such documents that are necessary under U.S. export laws and regulations for export, unless Seller expressly agrees, in writing, to do so.
27. **PERMITS, EXPORT, AND IMPORT LICENSES:** Buyer shall be responsible for obtaining any licenses or other official authorizations that may be required by the country of importation and/or under the Export Administration Regulations, International Traffic in Arms Regulations, Toxic Substances Control Act, or other applicable laws or regulations.

*Subsidiaries Include: Baro Process Products, Inc.; Baro Controls, Inc.; Corrosion Fluid Products Corp.; Hughes Machinery Company; Pump Energy, Inc.; Pump Pros, Inc.; R.L. Stone Company, Inc.; Basin Engine & Pump, Inc.; and Eads Distribution LLC.

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